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SUMMARY RECORD OF THE 148th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 April 1994, at 3 p.m.

Chairperson: Miss MASON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Chile (CRC/C/3/Add.18; CRC/C.6/WP.3) (continued)

1. Mr. QUINTANA (Chile), replying to questions asked by members of the Committee on the section entitled "Basic health and welfare" of the list of issues (CRC/C.6/WP.3), said that the Chilean health system was a mixed one in which the public sector was responsible for the greater part of preventive measures and the medical care of approximately 80 per cent of the country's total population. There were 27 autonomous services which were under the technical auspices of the Ministry of Health and were responsible for providing health care to the population.

2. The first case of AIDS in Chile had been diagnosed in 1984. Since then, the National Commission on AIDS of the Ministry of Health had been notified of 834 cases in 11 areas of the country. The increase in the growth rate of the AIDS epidemic had risen from an annual figure of 0.04 per 100,000 inhabitants in 1984 to 1.3 in 1992. Seventy per cent of the cases were concentrated in the metropolitan area. The Commission on AIDS had prepared a national programme based on the following principles: first, the recognition of the right to life as an inalienable right of all persons; second, respect for the right of the individual to choose the best method to deal with the disease; third, the importance of individual and social solidarity with AIDS victims with a view to avoiding unjustified discrimination. The Commission had also elaborated a programme for the prevention and control of AIDS which was based on participation, decentralization, integration of efforts and initiatives, consolidation of work accomplished and the national health structure within the framework of the Government's social policy.

3. With regard to measures taken for children in the field of mental health, he said that progress had been made in formulating a national mental health programme for infants and juveniles which included promotion, encouragement, prevention and rehabilitation activities.

4. With respect to disabled children, he said that on the aspect of prevention, priority had been given to two programmes which were concerned with the quality of life of Chilean children: a programme for early stimulation and evaluation of psychomotor development, and a large-scale testing programme for congenital hypothyroidism. The first programme was aimed at developing primary prevention activities for cases of psychomotor development deficit in children below six years of age and secondary prevention for other types of biological retardation. The second programme sought to detect at an early stage the two complaints that caused irreversible damage to the central nervous system and led to severe mental retardation.

5. On the question of rehabilitation, efforts were being made to ensure the integration of disabled minors in the educational, employment and social fields. Where it was not possible because of the degree or type of disability for a minor to be integrated into the regular general educational system, he received special education for the required period of time.

6. Referring to issue No. 6 of the list of issues, he pointed out that poor families were entitled to receive an allowance from the Government and their children had access to free medical care. At the present time, his Government's social policy was designed to improve the living standard of the poorest sectors of society.

7. Mr. MOMBESHORA noted that there had been a high rate of public expenditure in the health field in Chile. Recently, however, the proportion of investment seemed to have decreased, possibly as a result of changes in the economic system.

8. Referring to paragraph 91 of the report (CRC/C/3/Add.18), he said that he would welcome some elaboration on the statement to the effect that a large proportion of wastewater was being disposed of in rivers or at sea, since such a situation could be the cause of water-borne disease. In that connection, he recalled that a few years previously there had been an outbreak of cholera in Latin America and that Chile had been one of the countries involved. He asked whether cholera was still endemic in Chile. Furthermore, he would like to know whether, in cases of water contamination, the public health authorities adopted a policy of checking food handlers as a precautionary measure.

9. According to the representative of Chile, an efficient health service had helped to reduce the natural causes of child mortality. In that connection, he had pointed out that accidents were the main cause of death for the group of children between 1 and 4 years of age. He would like to know what sort of accidents the representative had had in mind.

10. Mr. KOLOSOV asked whether Chile had sufficient hearing aids for deaf children and books printed in Braille for blind children. If not, he would like to know whether such items were provided through international ccoperation.

11. Mr. QUINTANA (Chile) said that he did not have the impression that there had been a decline in public health expenditure in Chile. However, it should be borne in mind that in that area, the most expensive item was that of staff salaries and the replacement of essential technical equipment.

12. With regard to the matter of infant mortality, he said that one of the causes was hypothyroidism which was the principal cause of death of children between the ages of 2 and 4 in Chile.

13. Referring to the second sentence of paragraph 91 of the report of Chile, he said that in 1992, following an outbreak of cholera, his Government had adopted a project to build sewage treatment plants. It should be noted that one or two cases of cholera had been detected in 1993. With regard to the question of drinking water, he said that it was not the water itself that created a health problem but the fact that contaminated water was used to irrigate agricultural land.

14. There had been considerable public investment in antenatal clinics to increase the chances of detecting the problem of low birth weight children at an early stage. The National Supplementary Feeding Programmes had also been

set up for pregnant women in order to reduce morbidity and mortality related to malnutrition. No figures were immediately available for other causes of infant mortality.

15. He had no information regarding hearing aids for deaf children and books in Braille for blind children, but would submit details at a later stage.

16. Mr. MOMBESHORA said that he had wondered whether there was a system of regular tests on possible carriers of cholera, such as food handlers. In raising the question of privatization in the health system he had omitted to ask whether the Government paid any amounts not covered by private sources. What were the chronic diseases of the child referred to in paragraph 104 of the report (CRC/C/3/Add.18) and what were the problems which the country was currently experiencing?

17. Mr. QUINTANA (Chile) said that as far as he was aware, cholera tests were not carried out on possible carriers, but analyses were done on irrigation water, occasionally resulting in the destruction of vegetable produce which had been the main source of cholera in the country, although it had never reached epidemic proportions. There was still a ban on eating raw vegetables and seafood in case the virus should reappear.

18. Hospital privatization had been discussed but there were no plans in hand to make it a reality. However, there were two distinct systems of treatment, private and public, the private system, paid for by the user, providing slightly better service than the public system.

19. Paragraph 104 of the report referred to the problem of respiratory infections linked to high levels of atmospheric pollution particularly in Santiago. The sharp increase in cases of bronchial obstruction had resulted in special programmes being launched to try and treat those cases in clinics, which had received considerable investment as a result. The Ministry of Health had also implemented a number of programmes including one aimed at treating children with bronchial obstructions in the community rather than in hospital, where treatment was usually longer and substantially more costly, and good results were being obtained. The problem was nevertheless a serious one especially in Santiago during the winter months.

20. The CHAIRPERSON invited the Chilean delegation to respond to the issues in the section entitled "Education, leisure and cultural activities", which read as follows:

"Education, leisure and cultural activities

(Arts. 28, 29 and 31 of the Convention)

1. Please describe measures taken or planned to review school curricula and teaching methods in the light of article 29 of the Convention.

2. What further steps are taken to reduce the number of drop-outs from school?"

21. Mr. QUINTANA (Chile) said that one of the most important measures adopted in connection with issue No. 1 had been the creation in 1992 of a Commission known as a school for peace, which addressed all the issues relating to the rights of the child within the school environment, especially in relation to violence and ill-treatment. Among its conclusions was that 1994 should be designated the year of peace and non-violence in schools. That recommendation had been formalized by a presidential decree, and as a result, a series of activities were to be held in the course of the year to acquaint children with their rights and to inculcate in them the fundamental values of peace and non-violence as part of a person's upbringing and education. The Commission had also analysed the relationship between discipline in schools and the problem of the ill-treatment of children and the violation of their rights. In that connection it had made a number of proposals to change the criteria for school discipline. Those proposals had been discussed by the teachers' associations which had had reservations about them, considering that they would contribute to a further breakdown of discipline. His personal view was that the Commission's work was highly significant and that its proposals had made a valuable contribution to the teaching of human rights in schools.

22. Lastly, children in Chile were very aware of environmental issues and took an active part in environmental protection activities. In fact Chileans generally were taking a heightened interest in environmental problems and conservation measures.

23. With regard to issue No. 2, a number of measures had been implemented, possibly the most important being a programme introduced by the National Schools Board to increase the State's contribution to school meals by making them more widely available and improving their quality. That programme was complementary to the National Supplementary Feeding Programme operated by the Ministry of Health for pregnant women. In spite of improvements made to it, the programme still needed to reach a larger number of children. There had also been an increase in the number and amount of government grants for students to enable those with the necessary ability to complete their school and university studies.

24. Mr. HAMMARBERG welcomed the link made by Chile between article 29 of the Convention and the manner of applying discipline in schools. Repressive school discipline tended to undermine the purpose and intention of article 29, and in particular of paragraph 1 (d). Teachers' associations might therefore usefully discuss article 28, paragraph 2, which the Committee interpreted to mean the use of non-violent measures. It did not believe that beating was consistent with the human dignity of the pupil or with the Convention.

25. Mr. KOLOSOV asked how teachers' salaries compared with other average earnings, and whether they had any impact on the quality of staff employed in secondary schools.

26. Mr. QUINTANA (Chile) said that the salaries paid in the private schools were higher than those paid in the public or municipal schools. The average salary for a teacher in public and municipal schools was approximately $300, compared with the country's legal minimum wage of just under $150. In 1992 the teaching profession had acquired its own statute which regulated the

activities of the profession and its salaries, and had been awarded considerable pay increases in the past four years. Despite that improvement, teachers' salaries did not compare well with those of other professions.

27. The CHAIRPERSON invited the Chilean delegation to respond to the issues in the section entitled "Special protection measures", which read as follows:

"Special protection measures

(a) Children in situations of emergency

(Arts. 22, 38 and 39 of the Convention)

1. Please describe the present policy in regard to the implementation of international refugee standards as they relate to children. What legislation exists and is planned in this field? What procedures have been established to determine the status of asylum seekers?

(b) Administration of juvenile justice

(Arts. 40, 37 and 39 of the Convention)

2. Please provide further information, in the light of Articles 37, 40 and 39 of the Convention, in particular on:

- the prohibition of unlawful or arbitrary deprivation of liberty;

- the use of arrest, detention or imprisonment of a child as a measure of last resort and for the shortest period of time (see in particular paras. 54 to 57 of the report);

- the possibility to have a prompt access to legal and other appropriate assistance, as well as for challenging the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and of having a prompt decision thereon;

- the right of the child alleged as, accused of or recognized as having infringed the penal law to be treated in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society;

- the measures taken to implement Article 40 of the Convention, including the safeguards to be ensured to the child alleged as, accused of or recognized as having infringed the penal law;

- the measures taken or envisaged to deal with such children without resorting to judicial proceedings, and providing for human rights and legal safeguards to be fully respected (see in particular para. 54 of the report);

- alternative measures to institutional care made available to deal with such children in a manner appropriate to their well-being, as well as the establishment of laws and procedures specifically applicable to children alleged as, accused of or recognized as having infringed the penal law, in the light of Article 40, paragraph 3, of the Convention;

- special training courses for professional groups such as judges and law enforcement officials in the light of the Convention and of other United Nations standards adopted in the field of the administration of juvenile justice.

3. In the light of Article 40, paragraph 3, of the Convention which invites States to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, please provide further information on the Bill referred to in paragraph 238 of the report as well as the difference established in the present legislation on the criminal responsibility of children on the basis of 'discernment'.

4. Please provide further information on the way the provisions adopted in the area of protection of children from economic exploitation, namely through labour, are effectively implemented. What difficulties have been encountered? Cases of sanctions applied against violation of the law? Measures adopted to ensure an effective system of inspection? Moreover, please provide information on the measures adopted or envisaged to protect children working in the informal sector (see in particular para. 50 (c) of the report)."

28. Mr. LILLO (Chile), in reply to issue No. 1, said that throughout most of its history Chile had had a tradition of respect for human life and of providing protection to those requesting asylum or refugee status; only once for a brief period in its recent past had it been a source of refugees. Chile was a party to the Convention relating to the Status of Refugees, 1951, and its 1967 Protocol. Chilean legislation relating to foreigners had established a special category for political refugees to cover asylum-seekers forced to leave their country of residence. Although such provisions made no specific mention of refugee children, the family of an asylum-seeker was automatically granted protection at the same time as the person requesting asylum. Persons granted such protection were issued with a special visa enabling them to remain in Chile as legal residents. The legislation also contained provisions to enable persons entering the country on an irregular basis as a result of an emergency to be granted a residence permit. No uniform procedure had been established for considering applications for asylum or refugee status; since situations could be complex they were decided on a case-by-case basis. A bill intended to strengthen the protection afforded to refugees on the basis of the Convention and Protocol relating to Refugees, was at present under consideration by the Chamber of Deputies.

29. Mr. QUINTANA (Chile) said that issue No. 2 covered the area of greatest divergence between the Convention and national legislation. One reason was that the current legislation relating to minors had been based on provisions dating from 1928 and had not been modified or updated since its adoption. The legislation was based on the principle that a child could not be considered criminally responsible but required assistance and protection, which was provided by the juvenile magistrate. However, that tutelary function was buttressed by a system of deprivation of liberty, which because it was not explicitly referred to did not carry the necessary procedural guarantees; the legislation might thus be considered to be unconstitutional in some areas. The Government was aware of the problem, which was why in 1992 it had drawn up the bill to amend the existing regulations governing criminal responsibility of minors by establishing a system of responsibility for criminal offences by juveniles. That bill had, unfortunately, been rejected by the Senate in November 1993 mainly due to the failure to reach agreement on the age of criminal responsibility. Agreement on modification of the procedure for minors, on which there was general consensus among parliamentarians and legal experts, should thus not be difficult to achieve.

30. From the point of view of the administration of justice, there had been some progress in that courts were making efforts to reduce the duration of deprivation of liberty and improvements had been made in the administration of such deprivation. Special measures for the defence of juvenile offenders to be put in place during 1994 would ensure appropriate exercise of their rights.

31. Mr. KOLOSOV asked whether existing rules for the treatment of juvenile offenders were posted in public places within police premises to bring the provisions for protection of such offenders to the attention both of law enforcement officials and young offenders themselves.

32. Mrs. SANTOS PAIS welcomed the frank and self-critical tone of the report, which laid a sound foundation for solving the problems discussed. Revision of the system of juvenile justice, an area where children could suffer to a greater extent less visibly than elsewhere, should be a priority in Chile.

33. With regard to the legislation relating to age of criminal responsibility, which the Government was endeavouring to have amended, she recalled that accession to the Convention implied the commitment of the entire State, and not merely of the Government in power, to its provisions. While not advocating that they should in any way act outside the areas of their competence, she suggested that the judiciary and the administrative branches could well allow the basic principles enshrined in the Convention to guide them in their tasks, as was made plain in Article 3 of that instrument. The Convention gave a clear and objective definition of the age of criminal responsibility in Article 40, paragraph (3) (a); she therefore applauded the Government's efforts, through its proposed bill, to establish the age of criminal responsibility at 18 years of age, as suggested in Article 1 of the Convention.

34. Deprivation of liberty was unacceptable in the case of children in need of protection because they had been abandoned or subjected to ill-treatment. Such children had committed no offence against the law; the provisions of Article 40 of the Convention therefore did not apply.

35. The age of criminal responsibility should moreover be fixed and not liable to modification by subjective criteria such as attainment of discernment, as was the case in Chile. To deprive children of 16 or 17 years of age of their liberty for 15 days or more while awaiting a decision on their capacity for discernment, could affect them adversely and was contrary to the provisions of Article 37 of the Convention, especially as it seemed that such detention could take place among convicted offenders. It was also true that efforts were needed to deal with matters at the administrative level when legislative reform was not possible.

36. Mr. QUINTANA (Chile), in reply to Mr. Kolosov, said that as far as he was aware such rules were not posted in police stations in Chile. With regard to the question of depriving children who were abandoned or the victims of abuse of their liberty, such action as placing a child in an educational centre was not a legal sanction but a measure taken for the protection of such children. The legislation relating to minors made no provision for deprivation of their liberty.

37. The period of deprivation of liberty while awaiting a decision as to whether a minor was capable of discernment was set by law at a maximum of 15 days extendible by a further five days. The decision in 1989 that an appeal could be made against such detention represented a measure of progress; furthermore the judiciary took many more criteria into account, such as the opportunity for rehabilitation, in making its decision, with the result that in about 70 per cent of cases, the child was declared not to be capable of discernment. It was indeed illogical that children should be detained while such a decision was made; that was why efforts were being made to move from a tutelary system to a judgemental one.

38. Mrs. SANTOS PAIS pointed out that if children in need of protection were placed in a position where they were deprived of their liberty, they were in fact being deprived of the protection of the law.

39. Mrs. EUFEMIO asked whether a young person facing proceedings in a juvenile court would see the court as an enemy or as a friend. Were there officials attending the court who might allow the young person to feel that someone was protecting his or her interests?

40. Mr. QUINTANA (Chile) said that the present system was probably a confusing one for a young person accused of an offence and facing proceedings in a juvenile court. Because there was no clearly established procedure for the treatment of juvenile offenders, practice in any given court would probably vary from magistrate to magistrate. However, a social worker and frequently psychologists as well, were always in attendance at sittings of juvenile courts.

The meeting was suspended at 4.35 p.m. and resumed at 4.50 p.m.

41. The CHAIRPERSON invited the members of the Committee to make their concluding remarks on the initial report of Chile (CRC/C/3/Add.18) and on the Chilean delegation's replies to the list of issues (CRC/C.6/WP.3) and the further questions put to it orally.

42. Mrs. EUFEMIO commended the delegation of Chile on the comprehensive nature of the initial report and of its replies to the list of issues and the Committee's further questions. She had only three suggestions to make. Firstly, she felt that the National Plan of Action in Favour of Children should include specific measures, accompanied by targets, relating to family rights and other civil rights, including measures to provide spatial protection. Secondly, the service, to which the representative of Chile had referred, of free counselling on marriage should be made available as part of the general provisions and not limited to certain cases. Thirdly, since there were many instances which seemed to indicate that a more widespread use of social workers would help, it might be useful to establish a separate ministerial department of social welfare, inter alia to govern such aspects as professional training, supervision and possibly research.

43. Mr. MOMBESHORA said that he endorsed the thanks expressed to the Chilean delegation, particularly for the statistical information and other detailed contents of the report as well as the frank, self-critical approach. He had already referred to the problems stemming from reduced expenditure on measures to protect and promote the welfare of women and children; but he noted that Chile was endeavouring to maintain the level of services and increase it wherever possible. It was clear that the authorities had devoted a great deal of effort to health and education, and he hoped that those efforts would continue. In his view, environmental health was a subject which deserved particular attention. A feature frequently revealed by country reports was that, where immunization programmes had been effective, the proportion of pollution-related ailments tended to increase. He hoped, therefore, that the level of health services could be maintained and even expanded in spite of possible difficulties.

44. Mr. HAMMARBERG said that he, too, appreciated the analytical, self-critical and forward-looking nature of the report, as well as the evident high level of cooperation with non-governmental organizations. Chile had made progress in a major reform project, but much remained to be done. The Committee had noted some difficulty in Parliament with regard to measures to harmonize domestic legislation with the Convention's provisions, and would like to take the somewhat unusual step of requesting that a message should be conveyed to the Chilean Parliament about the importance the Committee attached to the adoption of legislation aimed at conformity with the provisions of the Convention, in the spirit of articles 3 and 4 of the latter.

45. The Committee had noted the institutional changes being undertaken, and the desire to decentralize structures while enhancing coordination. In that regard, it stressed the importance of strictly monitoring the results of the changes, in order, inter alia, to avoid regional disparities and any adverse effects on the less-advantaged social groups. The Committee appreciated the ombudsman services of the Schoolchildren's Advocate, which it hoped could be broadened. With regard to the study of cases of sexual abuse and other forms of ill-treatment, it encouraged a greater use of non-legal responses, not least in the provision of social assistance. It welcomed the other progressive measures reported, such as those in the field of mental health and psychomotor problems, and the steps taken to ensure equality in education.

He hoped that Chile's initial report and replies to the Committee's observations, and the summary records of the current discussion, could be made available to the public in Chile.

46. Mrs. SANTOS PAIS said that the initial report of Chile, and the replies to the Committee's questions, presented a valuable picture of what had been done in the field of the rights of the child, while at the same time reflecting concern about shortcomings and showing a forward-looking approach. She noted the efforts to align legislation with the Convention's provisions and the possibility, by means of jurisprudence, of invoking them direct in the courts. She recommended that further measures should be taken to promote public awareness of the Convention, including special information programmes for children and suitable training for all those responsible for taking decisions relating to the rights of the child; a follow-up and monitoring system should be established in that regard. It was important that the Convention's basic principles should be reflected in all legislative and other measures relating to matters such as minimum marriageable age, criminal law and procedure, guardianship, adoption and respect for the child's views; and efforts should be made to develop and expand the work begun in the municipal councils. She endorsed Mr. Hammarberg's request with regard to publication, and wondered, in particular, whether the secretariat could arrange for the Chilean Government's replies to the Committee's comments and questions to be issued as an official document of the Committee. The current deliberations should be made available to the Chilean Parliament and public, stressing that the commitment to the rights of the child was undertaken not by the Government alone but by the State. She also thought that measures to deal with ill-treatment and abuse of children should include adequate investment in professional training and mediation services. With regard to juvenile justice, she hoped that the new system would be based on the provisions of the Convention and other relevant United Nations instruments, especially with regard to the age of criminal liability; the advisory services available in the Centre for Human Rights should be borne in mind in that regard. Steps to promote observance of the Convention were also steps to strengthen democracy.

47. Mr. KOLOSOV associated himself with the previous speakers in commending the quality of the report and the high standard and frankness of the Chilean delegation's replies. With regard to the decentralization measures mentioned, he hoped that the Chilean Government would bear in mind the need to ensure uniformity of protection for children and that local authorities were not left too much to their own devices in that regard. He also agreed about the importance of promoting awareness of the Convention's provisions in all spheres of Chilean society, especially in the professional ranks such as doctors, teachers, police and the judiciary. He expressed his best wishes to the Chilean delegation and authorities.

48. Mr. QUINTANA (Chile) reiterated his delegation's appreciation of the opportunity to transmit the Chilean Government's report to the Committee and to outline the country's concern for the situation of children as well as the measures adopted and envisaged in order to implement the Convention's provisions. The authorities were aware that much remained to be done in order to fulfil the task, to which they remained committed. Since 1990 Chile had been undergoing major changes, fully aware that, as a developing country, it faced many challenges, including those related to the rights of the child,

but with limited resources as its disposal. Despite the difficulties, it intended to go forward. Mindful of that spirit, his delegation would endeavour to transmit the Committee's views faithfully to the Government. He thanked the members of the Committee for their observations and assured them of Chile's continuing efforts to improve the situation of children in that country.

49. The CHAIRPERSON requested the Chilean delegation to convey to its Government the Committee's appreciation of the high standard of its initial report; she also praised the knowledge, commitment and cooperation shown by the representative of Chile. She reiterated the Committee's sincere thanks to the delegation.

The meeting rose at 5.20 p.m.